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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/087,180	03/01/2002	Gunil Chung	EMP-001 (8935/5)	2590

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EXAMINER

MOONEYHAM, JANICE A

ART UNIT	PAPER NUMBER
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3629

DATE MAILED: 06/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/087,180

Applicant(s)

CHUNG ET AL.

Examiner

Janice A. Mooneyham

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 March 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-46 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-46 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

1. This is in response to the applicant's communication filed on March 1, 2002, wherein claims 1-46 are currently pending.

Information Disclosure Statement

2. The information disclosure statement (IDS) submitted on April 12, 2002 is being considered by the examiner.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 24-32 are rejected under 35 U.S.C. 102(e) as being anticipated by Mangipudi et al (US 7,058,704) (hereinafter referred to as Mang).

Referring to Claim 24.

Mang discloses a system for determining compliance with a service level agreement comprising;

a first agent in communication with a service provider, the first agent comprising software running on a stand-alone computer for obtaining operational data from the service provider (Figure 1 Agent 1);

a first receiver in communication with the first agent, the first receiver receiving the operational data from the first agent (Figure 1 Accumulator); and

an analyzer in communication with the first receiver, the analyzer extracting data corresponding to at least one service level agreement requirement from the received operational data, refining the extracted data to generate a service level data set related to at least one requirement of the service level agreement, and comparing the service level data set at least one requirement of the service level agreement thereby determining compliance with the service level agreement (col. 7, lines 8-48).

Referring to Claim 25.

Mang discloses a second agent in communication with a customer, the second agent comprising software running on a stand-alone computer for obtaining operational data from the customer data source (Figure 2 Agent2); and

a receiver in communication with the second agent and the analyzer, the receiver receiving data stored in the customer data source from the second agent (Figure 2 Accumulator).

Referring to Claim 26.

Mang discloses wherein the first receiver and the second receiver are the same receiver (Figure 2 Accumulator).

Referring to Claim 27.

Mang discloses a third agent in communication with a third-party, the third agent comprising software running on a stand-alone computer for obtaining operational data from the third party (Figure 2 Agent 3); and

a third receiver in communication with the third agent and the analyzer, the third receiver receiving data from the third-party data source (Figure 2).

Referring to Claim 28.

Mang discloses wherein the third receiver is the same as at least one of the first receiver and the second receiver (Figure 3 Accumulator)

Referring to Claim 29.

Mang discloses a cache in communication with the first receiver, wherein the cache stores the received operational data (Figure 2 (204)).

Referring to Claim 30.

Mang discloses wherein the analyzer comprising a quantizer in communication with the first receiver, the quantizer for extracting data corresponding to service level agreement requirements from the received operational data for refining the extracted data to generate a service level data set related to a portion of requirements of the service level agreement, and for comparing the service level data set to the portion of the requirements of the service level agreement to determine compliance with the service level agreement; and a data warehouse in communication with the quantizer, the data warehouse for storing at least the service level data set and comparing a plurality of stored service level data sets to the portion of the requirements

of the service level agreement to determine compliance with the service level agreement (col. 4, lines 3-30).

Referring to Claim 31.

Mang discloses a reporting module in communication with the data warehouse, wherein the reporting module generates reports in response to customer requests (Figure 4 (812)).

Referring to Claim 32.

Mang discloses a database, and the wherein the first agent is in communication with the database (Figure 2).

4. Claims 33-46 are rejected under 35 U.S.C. 102(e) as being anticipated by Bartz et al (US 6,701,342).

Referring to Claims 33-46.

Bartz discloses a method for determining compliance with at least one term of an agreement for service between a customer and a service provider, the method comprising the steps of:

- a. receiving operational event data related to performance of a service by a service provider (Figure 2 and col. 7, lines 16-34);
- b. identifying at least one time period interval relevant to the at least one term in an agreement for service between a customer and the service provider (Figure 2; col. 7, lines 16-34);

c. deriving episode data in response to the received operational event data
(Figure 2; col. 7, lines 16-34);

d. deriving at least one fact relevant to the at least one term in the agreement for service in response to the episode data and in response to the identified at least one time period interval relevant to the agreement for service (Figure 2; col. 7, lines 16-34);
and

e. determining compliance of the service provider to the at least one term in the agreement for service in response to the derived at least one fact (Figure 2; col. 7, lines 16-34).

Referring to 34-36:

Bartz discloses the operational event data is generated by a computer; wherein the operational event data comprises a list of events, wherein the time period interval relevant to the at least one term in an agreement for service is identified automatically from the at least one term in the agreement for service, wherein the determined episode data comprises a list of time periods in which a level of service was provided, wherein the step of deriving facts relevant to the at least one term in the agreement for service comprises sampling the episode data at the identified at least one time period relevant to the agreement for service, wherein the step of deriving facts relevant to the at least one term in the agreement for service comprises sampling the episode data such that an aggregation of facts are used to derive the episode data, notifying a user of the determined compliance of the service provider to the at least one term in the agreement, wherein the at least one term of the agreement comprise the service

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requirements of a service agreement, and wherein the at least one time period is the time periods relevant to the service requirements (col. 1, lines 26-67, col. 5, lines 11-25, col. 7, lines 5-35).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-4, 7, 11-13, 15-19, and 22-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bartz et al (US 6,701,343) (hereinafter referred to as Bartz) in view of Elnozahy et al (2002/0077836) (hereinafter referred to as Elnozahy).

Referring to Claim 1.

Bartz discloses a method of determining compliance with at least one service level agreement requirement, the method comprising the steps of:

receiving operational data from a service provider or customer by an agent (col. 4, lines 31-45); and

comparing the received operational data to at least one service level agreement requirement to determine compliance with at least one service level agreement requirement (col. 2, lines 28-34; col. 5, lines 11-26).

Bartz does not explicitly disclose that the agent is not related to service provider.

However, Elnozahy discloses independent verification [0011].

It would have been obvious to one of ordinary skill in the art to incorporate into the service level compliance method of Bartz the independent verification as taught in Elno to provide an independent verifier that the performance parameters guaranteed by the service provider are in fact in compliance.

Referring to Claim 2.

Bartz discloses before the receiving steps the step of requesting, by the agent, the operational data from the service provider (col. 4, lines 47-67).

Referring to Claim 3.

Bartz discloses wherein the step of receiving operational data comprises receiving performance data indicative of a performance level of a contracted for service provided by the service provider to a customer (col. 1, lines 54-67; col. 4, line 30-46).

Referring to Claim 4.

Bartz discloses wherein the performance data comprise data indicative of the availability of a server adapted to provide a contracted for service to a customer of the service provider (col. 1, lines 54-67).

Referring to Claim 7.

Bartz discloses wherein the service provider is at least one of an application service provider, an internet service provider, a hosting provider, a commerce service provider, a content service provider, a network service provider, a security service provider, a storage service provider, vertical service provider, or a wireless service provider (col. 1, lines 25-40, col. 2, lines 14-18; and col. 3, lines 6-12).

Referring to Claim 11.

Elna discloses wherein the step of comparing the received operational data comprises deriving episode data in response to the received operational data; deriving at least one fact relevant to the at least one service level agreement requirement in response to the episode data; and determining compliance with the service level agreement requirement in response to the derived at least one fact [0021].

Referring to Claim 12.

Bartz discloses wherein the service provider comprises a database, the database comprises data from at least one of an enterprise management system, a network management system and an application management system (col. 1, lines 26-40, Figure 1).

Referring to Claim 13.

Elna discloses wherein the receiving step comprises receiving operational data comprising events logged by the at least one of the enterprise management system, network management system and application management system [0021].

Referring to Claim 15.

Elna discloses wherein the agent is controlled by a party not related to the service level agreement [0011].

Referring to Claim 16.

Bartz discloses wherein the at least one service level agreement requirement is derived from at least one term of a service level agreement (col. 3, lines 6-48).

Referring to Claim 17.

Bartz discloses wherein the at least one service level agreement requirement comprises all of the terms of a service level agreement (col. 3, lines 6-48).

Referring to Claim 18.

Bartz discloses wherein the at least one service level agreement requirement comprises at least one service level guarantee (col. 1, lines 54-67).

Referring to Claim 19.

Bartz discloses wherein the at least one service level agreement requirement comprises at least one service level objective (col. 1, lines 41-53).

Referring to Claim 22.

Bartz discloses a method of determining compliance with a service level agreement requirement, the method comprising the steps of:

- receiving a first set of operational data from a service provider;
- receiving a second set of operational data from a customer (col. 1, lines 25-67);
- receiving a third set of operational data from a third-party; and
- comparing the first received set of operational data, the second received set of operational data, and the third received set of operational data to at least one service level agreement requirement to determine compliance with the at least one service level agreement requirement.

Referring to Claim 23.

Bartz discloses wherein the step of comparing the received operational data comprises, for each set of operational data:

identifying at least one time period interval relevant to the at least one term in an agreement for service between a customer and the service provider (Figure 2);

deriving episode data in response to the respective received operational data (col. 7, lines 16-35);

deriving at least one fact relevant to the at least one term in the agreement for service in response to the episode data and in response to the identified at least one time period interval relevant to the agreement for service (col. 7, lines 16-35); and

determining compliance of the service provider to the at least one term in the agreement for service in response to the derived at least one fact (col. 7, lines 16-35).

6. Claims 5-6, 8-10 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bartz and Elnor as applied to claim 1 above, and further in view of Mangipudi et al (US 7,058,704) (hereinafter referred to as Mang).

Referring to Claim 5.

Bartz does not explicitly disclose wherein the performance data comprises data indicative of a bandwidth level provided by the service provider to a customer.

However, Mang discloses wherein the performance data comprises data indicative of a bandwidth level provided by the service provider to a customer (col. 1, lines 56-63; col. 5, lines 46-49).

It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate into service level agreement compliance method of Bartz the

teaching of performance data being bandwidth since this is often one of the performance data that is specified by a customer.

Referring to Claim 6.

Mang discloses wherein the performance data comprises data indicative of a response time to fulfill a request by a customer for a contracted for service (col. 6, lines 40-49).

Referring to Claim 8:

Mang discloses wherein the step of comparing comprises: filtering the received operational data; and comparing the filtered operational data to the at least one service level agreement requirement to determine compliance with the service level agreement requirement (col. 4, lines 3-38).

Referring to Claim 9.

Mang discloses storing the filtered operational data (col.7, lines 30-48).

Referring to Claim 10.

Mang discloses incorporating the filtered operational data with the stored operational data; and comparing the incorporated operational data to the at least one service level agreement requirement to determine compliance with the service level agreement requirement (col. 3, lines 11-35).

Referring to Claim 14.

Mang discloses wherein the agent comprises stand-alone hardware running a secure software program controlled by a party other than the service provider (Figure 1).

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7. Claim 20-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mangipudi et al (US 7, 058,704) (hereinafter referred to as Mang) in view of Bartz.

Referring to Claim 20.

Mang method of determining compliance with a service level agreement requirement, the method comprising the steps of:

receiving a first set of operational data from a service provider;

receiving a second set of operational data from a customer (col. 4, lines 3-20).

Mang does not explicitly disclose comparing the first received set of operational data and the second received set of operational data to at least one service level agreement requirement to determine compliance with the at least one service level agreement requirement.

However, Bartz discloses comparing the first received set of operational data and the second received set of operational data to at least one service level agreement requirement to determine compliance with the at least one service level agreement requirement (col. 1, lines 26-53; col. 3, lines 6-48).

It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate into the compliance method of Mang the comparison disclosed in Bartz to determine whether or not the SLA has been violated based on whether or not the SLO has been met.

Referring to Claim 21.

Bartz discloses wherein the step of comparing the received operational data comprises, for each of the first set of operational data and the second set of operational data:

identifying at least one time period interval relevant to the at least one term in an agreement for service between a customer and the service provider (Figure 2);

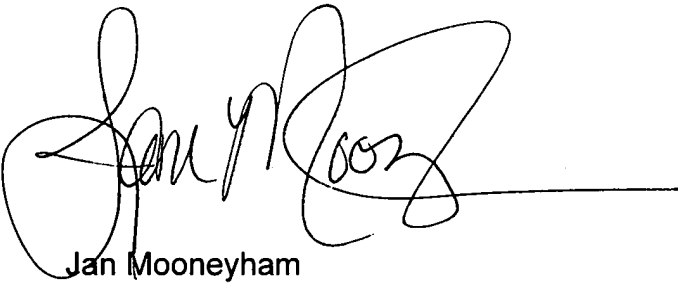
deriving episode data in response to the respective received operational data; deriving at least one fact relevant to the at least one term in the agreement for service in response to the episode data and in response to the identified at least one time period interval relevant to the agreement for service (col. 7, lines 16-34); and

determining compliance of the service provider to the at least one term in the agreement for service in response to the derived at least one fact (col. 7, lines 16-34).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Janice A. Mooneyham whose telephone number is (571) 272-6805. The examiner can normally be reached on Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on (571) 272-6812. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Jan Mooneyham
Patent Examiner
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